

8

## CONDUIT LICENSE AGREEMENT

This Conduit License Agreement ("Agreement"), effective \_\_\_\_\_, 2004, by and between Pacific Bell Telephone Corporation, a California corporation dba SBC California ("SBC") and the City of Milpitas ("City"), is made with reference to the following facts:

### RECITALS

- A. City is the owner of a conduit system located in the Public Right of Way in the City of Milpitas ("City Conduit(s)"); and
- B. In order to effectuate a service order request, SBC desires to use 2 of the conduits owned by the City at the locations set forth in Exhibit A, Exhibit C and Exhibit D attached hereto and made a part hereof; and
- C. SBC is also an owner of conduit in the City of Milpitas ("SBC Conduit(s)"); and
- D. In exchange for SBC's use of City's conduit, City desires to use an innerduct in conduit owned by SBC for the City's own telecommunications purposes at the locations set forth in Exhibit B attached hereto and made a part hereof; and
- E. Both parties are willing to permit the other party to use their respective conduit under the terms and conditions set forth below.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

### TERMS AND CONDITIONS

#### 1. Grant of License by City

City hereby grants to SBC a non-exclusive license ("City License") to use 2-1.25 inch City Conduits. SBC's use of such City Conduits shall be confined to the placement of the following facilities: ("Facilities"). Exhibit A contains an overview of the City Conduits referred to in this agreement. Exhibit C describes a portion of the City's Conduit that is being licensed under this Agreement and contains a copy of the Right of Way Dedication and Grant of Easement for Fiber Optic and Telecommunications Purposes between Grifcar Partners and the City of Milpitas recorded in the Santa Clara County Recorder's Office on July 20, 2001 under document number 15783435. City warrants that the Grant of Easement is assignable and can be apportioned to SBC, and City hereby assigns and apportions the Grant of Easement to SBC for the purposes set forth in this Agreement. Exhibit D contains a copy of a memorandum of understanding between Ken

Naylor and Rudy Dantes referencing City conduit running under the 880 Freeway for approximately 500 feet.

This City License applies only to the City Conduits described in Exhibits A, C and D and does not grant SBC permission to use any other conduit or property in which City has an ownership or other interest.

2. Grant of License by SBC.

Subject to the terms and conditions of General Order 69-C of the California Public Utilities Commission, SBC hereby grants to City a non-exclusive license ("SBC License") to use 1 innerduct in SBC Conduit. City's use of such SBC innerduct shall be confined to the placement of the following facilities: ("Facilities")

**Section 1.**

Beginning at MH78-1260 continuing for approximately 733 feet to SB75-126 continuing for approximately 495 feet to SB92-300 continuing for approximately 524 feet to SB74-69 continuing for approximately 409 feet to SB74-111 continuing for approximately 602 feet to SB80-735.

**Section 2.**

Beginning at SB63 continuing for approximately 122 feet to MH61 continuing for approximately 904 feet to MH62 continuing for approximately 900 feet to MH71 continuing for approximately 871 feet to MH81 continuing for approximately 964 feet to MH82 continuing for approximately 132 feet to MH90-88 continuing for approximately 197 feet to MH84.

**Section 3.**

Beginning at MH90-88 continuing for approximately 149 feet to MH84-46 continuing for approximately 608 feet to MH80-418 continuing for approximately 788 feet to MH75-115 continuing for approximately 741 feet to MH75-130 continuing for approximately 200 feet to the new SSB.

This SBC License applies only to the SBC Conduit described in Exhibit B and does not grant City permission to use any other conduit or property in which SBC has an ownership or other interest.

3. No Ownership Rights

No use, however extended, of either party's conduit shall create or vest in the other party any ownership or property rights in such conduit. The rights granted here shall be and remain a license. Nothing in this Agreement shall be construed

to compel either party to construct, install, modify, or place any conduit or other facility for use by the other party.

4. Term

The term of this Agreement is for twenty years, commencing on the effective date of this agreement and expiring on June 30, 2024. Either party shall have the option to renew this Agreement for an additional period upon providing the other party 90 days written notice prior to the original termination date and upon mutually agreeable terms and conditions.

5. Compliance with Laws

City and SBC shall conduct all operations that are the subject of their respective licenses in compliance with all federal, state, and municipal statutes and ordinances, and with all regulations, orders, and directives of appropriate governmental agencies, as such statutes, ordinances, regulations, orders, and directives now exist or provide. Neither party shall use the Facilities installed in the other party's conduit for any unlawful purpose.

6. Legal Requirements

City and SBC shall obtain from public authorities and private owners of real property any and all required permits, licenses, grants or other approvals necessary for the lawful exercise of the permission granted under this Agreement.

7. Liens and Claims

Neither party will permit any mechanics', materialmen's, or other similar liens or claims to stand against the other party's conduit for labor or material furnished in connection with any work performed by either party under this Agreement. Upon reasonable and timely notice of any such lien or claim delivered to the other party (the owner of the conduit) by the licensing party, the licensing party may bond and contest the validity and the amount of such lien, but the licensing party will immediately pay any judgment rendered, will pay all proper costs and charges, and will have the lien or claim released at its sole expense.

8. Construction of Attachments and Inspections

The licensing party shall, at its own expense, construct and maintain its Facilities in the other party's conduit in a safe condition in a manner reasonably acceptable to the owner of the conduit, so as not to conflict or interfere with the use of the conduit by such owner or by other authorized users of the conduit. The owner of the conduit shall have the right (i) to inspect the installation of the licensing party's Facilities in the conduit, and (ii) to make periodic inspections of the licensing party's Facilities at the owner's reasonable discretion.

## **9. Modification to Existing Conduit**

- 9.1 The owner of the conduit may, in its sole discretion, modify the use, location or configuration of its conduit(s). The licensing party, at its own cost and expense, and at the conduit owner's request (without claim for reimbursement or damages against the conduit owner), shall relocate or alter its Facilities where necessary due to conduit construction or reconstruction by or on behalf of the owner of the conduit, or due to the construction or relocation of Licensor's conduit(s) or lines.
- 9.2 Notification of modification initiated by or on behalf of the conduit owner shall be provided to the licensing party at least thirty (30) days prior to beginning modifications. Such notification shall include a brief description of the nature and scope of the modification. No such notice shall be required in emergency situations or for routine maintenance of conduit(s).

## **10. Restoration of Service**

In the event of any service outage affecting both the owner of the conduit and the licensing party, both parties shall mutually agree on reasonable restoration plans.

## **11. Removal of Facilities**

The licensing party, at its expense, will remove its Facilities from any of the conduit owned by the other party within 30 days after termination of the license covering such Facilities. If the licensing party fails to remove its Facilities within such 30 day period, the owner of the conduit shall have the right to remove such Facilities at the licensing party's expense and without any liability on the part of the owner of the conduit for damage or injury to the licensing party's attachments unless caused by the negligence of intentional acts of the owner of the conduit.

## **12. Liability and Damages**

- 12.1 Each party shall be responsible for any actual physical damages it directly causes to the other in the course of its performance under this Agreement, limited to damages resulting from personal injuries, death, or property damage, including but not limited to damage to either party's facilities or the facilities of other users of the conduit(s), arising from negligent acts or omission; PROVIDED HOWEVER, THAT LICENSOR SHALL NOT BE LIABLE TO LICENSEE FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, OR SPECIAL DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO ANY LOSS OF USE, LOSS OF BUSINESS, OR LOSS OF PROFIT.

- 12.2 Each party shall indemnify, protect, and save harmless the other party, or other Licensee(s), from and against all claims, demands, or causes of action and costs, including attorney's fees for damages to property and injury or death to persons, including but not limited to payments under any Worker's Compensation Law or under any plan for employee's disability and death benefits, which may arise out of or be caused by the placement, maintenance, presence, use or removal of Licensor's or Licensee's Facilities, or by any act or omission of a party's employee, agent, or contractor.
- 12.3 Each party shall promptly notify the other of all claims relating to the damage of Licensor's or Licensee's Facilities, property, or injury or death of persons, arising or alleged to have arisen in any manner, directly or indirectly, by the placement, maintenance, repair, presence, use, or removal of Licensor or Licensee Facilities.

13. Insurance

- 13.1 SBC is self-insured.

14. CITY Representative

The City Manager, or his or her designee, shall represent CITY in all matters pertaining to the services to be rendered under this Agreement; all requirements of CITY pertaining to the services and materials to be rendered under this Agreement shall be coordinated through the CITY representative.

Notices shall be sent to CITY:

Information Services Department  
1265 N. Milpitas Blvd.  
Milpitas, CA 95035

15. SBC Representative

Gary Murphy shall represent SBC in all matters pertaining to the services and materials to be rendered under this Agreement. All requirements of SBC pertaining to the services or materials to be rendered under this Agreement shall be coordinated through the SBC representative.

Notices shall be sent to SBC:

SBC  
Attention: Gary Murphy  
3475B N. First St., Room 600B  
San Jose, Ca 95134

## 16. Notices

- Unless otherwise provided herein, all notices required hereunder shall be given by first class mail, postage prepaid and addressed to the party at the address indicated above, provided, however, that in lieu thereof, notice may be given by personal delivery to the party.

## 17. Termination

- 17.1 Either party may terminate this Agreement for Cause provided written notice specifying the Cause for termination and requesting correction within sixty (60) days is given the other party and such Cause is not corrected within such sixty (60) day period. Cause is any material breach of the terms of this Agreement, including but not limited to the licensing party using its Facilities in violation of any law or in aid of any unlawful act or making an unauthorized modification to the other party's conduit(s).
- 17.2 The licensing party may terminate this Agreement with respect to the license obtained from the other party without Cause upon thirty (30) days written notice to the owner of the conduit.
- 17.3 If the owner of the conduit terminates this Agreement for Cause, OR if the licensing party terminates this Agreement without Cause, the licensing party shall remove its Facilities from the owner's conduit(s) within sixty (60) days of such written notice.
- 17.4 If this Agreement is terminated by the owner of the conduit for reasons other than Cause or by reason of the expiration of the Agreement, the licensing party shall remove its Facilities from the owner's conduit(s) within one hundred and eighty days (180) from the date of termination.

## 18 Assignment

Neither party shall, without the prior consent in writing of the other party, assign, transfer, sublet this Agreement or permit any other person or entity to use any of its Facilities placed in the other party's conduit, such consent to be granted or withheld in the other party's sole discretion; provided, however, that either party may assign or transfer this Agreement to any parent, subsidiary, successor or affiliated company without prior written consent of the other party. Any attempted assignment in contravention of this paragraph shall be null and void. Subject to the foregoing, this Agreement shall inure to the benefit of and be binding upon the respective heirs, administrators, executors, successors and assigns of the parties hereto.

## 19 General Provisions

- 19.1 Applicable Law. This Agreement shall be construed in accordance with the laws of the State of California.
- 19.2 Time of Essence. Time is of the essence of this Agreement.
- 19.3 Force Majeure. Except for the payment of moneys due under this Agreement, neither party shall be deemed in default hereunder to the extent that any delay or failure in the performance of its obligations results from causes beyond its reasonable control and without its fault or negligence. In the event of any such excused delay, the time for performance shall be extended for a period equal to the time lost by reason of the delay. If any excused delay occurs, the party unable to perform shall give immediate notice to the other party, while simultaneously seeking, in good faith to utilize reasonable alternative means for accomplishing the purposes of this Agreement and preventing delay.
- 19.4 No Third Party Beneficiaries. Except as otherwise provided in this Agreement, the provisions of said Agreement are for the benefit of the parties hereto and not for any other person.
- 19.5 Waiver. Waiver by either party of any provision of this Agreement, or of default or breach by the other party, shall not be deemed a general waiver of provisions, or as a waiver by the nondefaulting party of any subsequent default or breach.
- 19.6 Modifications and Amendments. No provision of this Agreement shall be deemed waived, amended or modified by either party, unless such waiver, amendment or modification is in writing and signed by the authorized representative of the party against whom it is sought to enforce such waiver, amendment or modification.
- 19.7 Entire Agreement/Conflict With Prior Agreements. This Agreement and the Exhibits attached hereto or referenced herein constitute the entire Agreement between the parties with respect to the subject matter thereof. Except as otherwise provided in the Agreement, all prior agreements, representations, statements, negotiations, understandings and undertakings are superseded hereby.

APPROVAL SIGNATURES

By signing below, the following individuals hereby represent that they have legal authority to obligate their respective organizations to this agreement.

City of Milpitas

Date: \_\_\_\_\_

By: \_\_\_\_\_

Thomas J. Wilson, City Manager

Approved as to Content:

Approved as to Form:

By: \_\_\_\_\_

Information Services Director

By: \_\_\_\_\_

Steven T. Mattas, City Attorney

Attest:

By: \_\_\_\_\_

Gail Blalock, City Clerk

Pacific Bell Telephone Corporation, a California corporation dba SBC  
California

Date: \_\_\_\_\_

By: \_\_\_\_\_

This signed Agreement together with a Purchase Order, if applicable, shall be sent to the following address:

SBC  
Attention: Gary Murphy  
3475B N. First St., Room 600B  
San Jose, Ca 95134

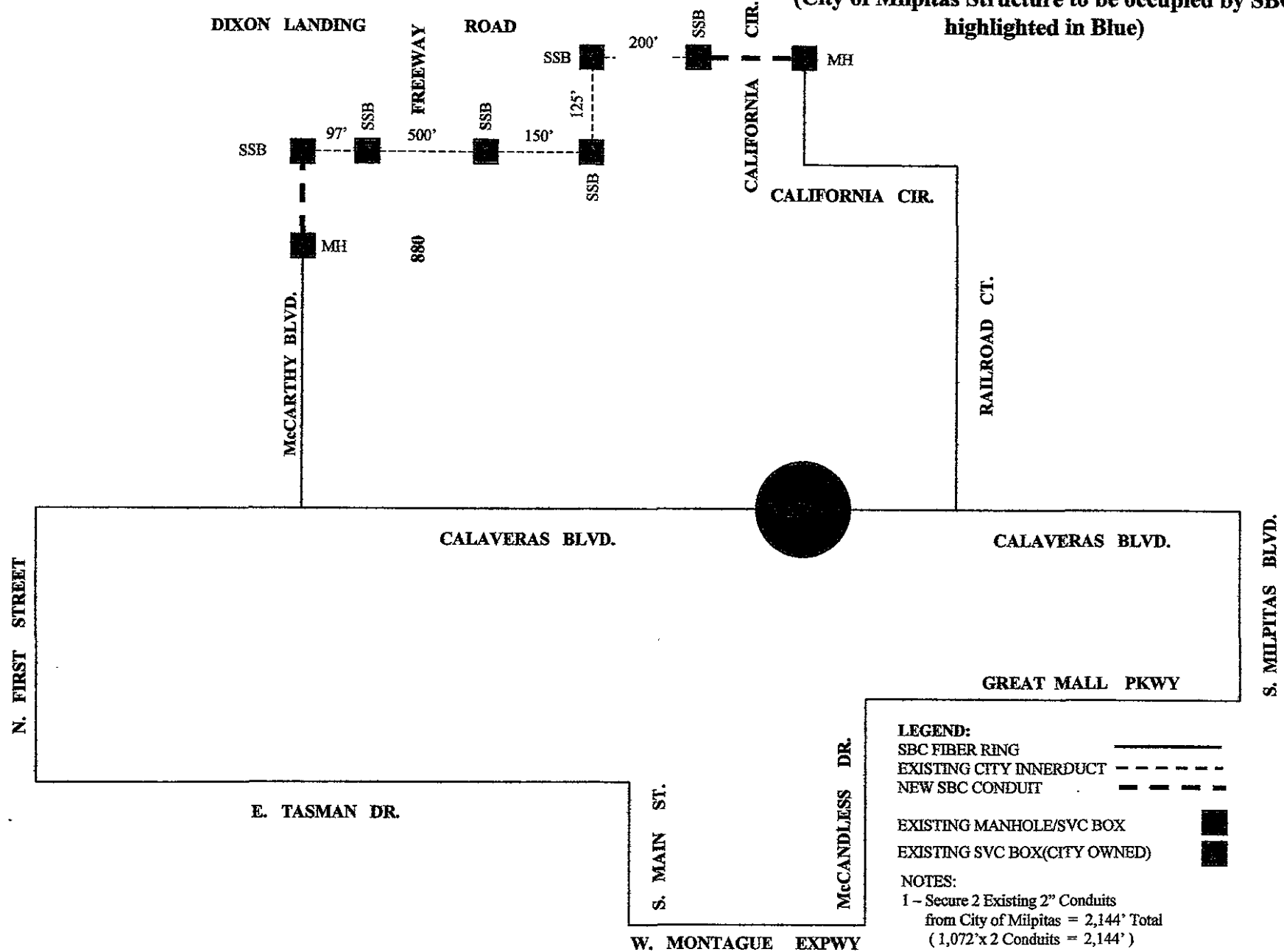


## EXHIBIT A

# EXHIBIT A

## SBC FIBER RING

(City of Milpitas Structure to be occupied by SBC highlighted in Blue)

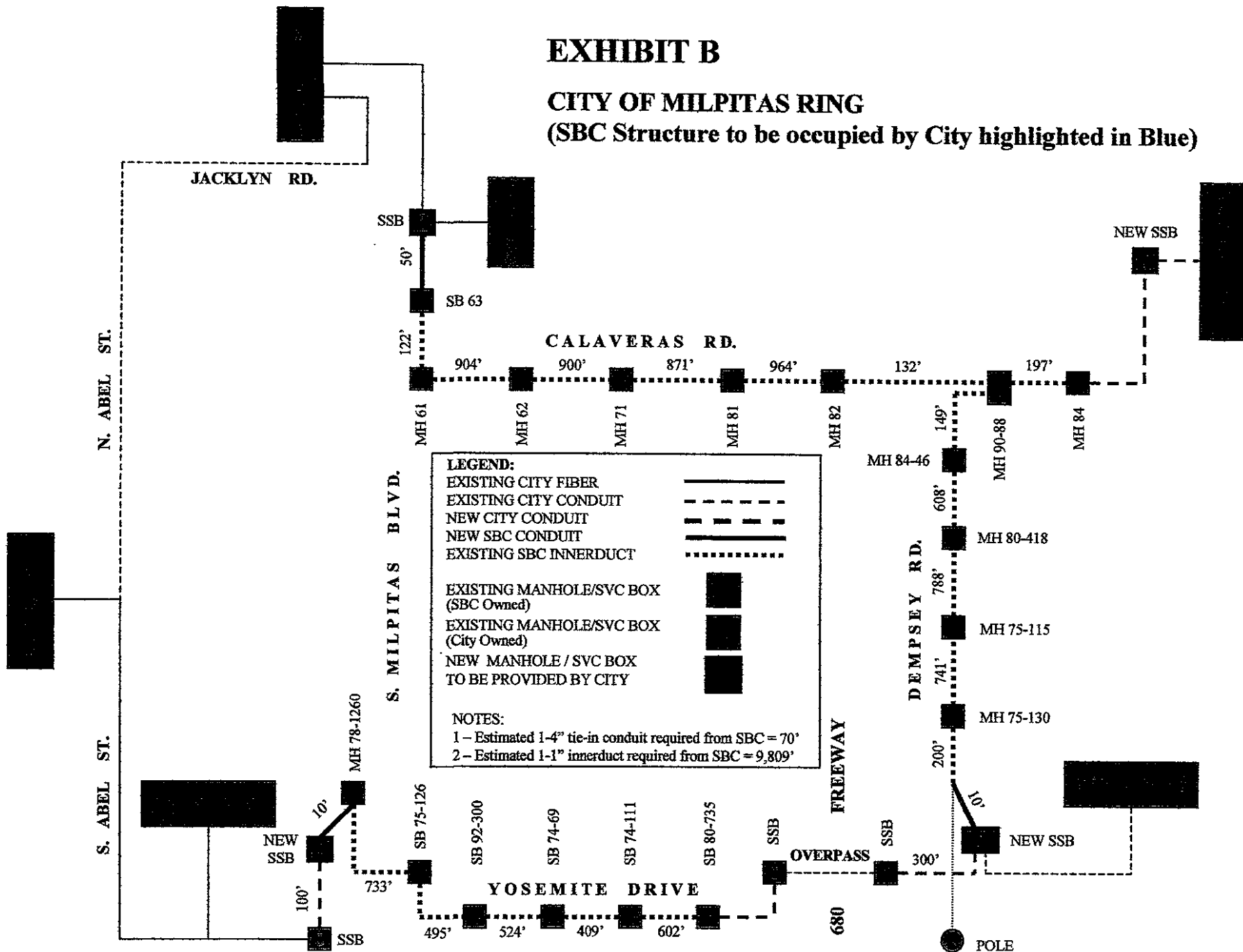


## **EXHIBIT B**

## EXHIBIT B

### CITY OF MILPITAS RING

(SBC Structure to be occupied by City highlighted in Blue)



## EXHIBIT C

First American Title  
#518915

DOCUMENT: 15783435



Titles: 1 / Pages: 5

Fees....\* No Fees

Taxes...

Copies..

AMT PAID

## Control No. 2000-26

Recording requested by:

City of Milpitas

When recorded mail to:

City of Milpitas

City Engineer's Office

455 E. Calaveras Blvd.

Milpitas, Ca 95035

Record without fee under Sections,  
6103 and 27383 -Government  
Code, State of California

BRENDA DAVIS  
SANTA CLARA COUNTY RECORDER  
Recorded at the request of  
First American Title Company

RDE # 101

7/20/2001

8:00 AM

**RECEIVED**  
AUG 29 2001  
CITY OF MILPITAS  
ENGINEERING DIV.

## RIGHT OF WAY DEDICATION AND GRANT OF EASEMENT FOR FIBER OPTIC AND TELECOMMUNICATION PURPOSES

**Grifcar Partners**  
**A California Limited Partnership**

**FOR VALUABLE CONSIDERATION**, receipt whereof is hereby  
acknowledged,

**DOES HEREBY DEDICATE AND GRANT TO THE CITY OF  
MILPITAS, CALIFORNIA**, a Municipal Corporation, its successors and  
assigns, the permanent easement and right of way to construct, maintain,  
operate, repair, alter, replace, relocate and remove Fiber Optic and  
Telecommunication facilities over, under, along and across the following  
described parcel of real property situated in the City of Milpitas, County of  
Santa Clara, State of California:

As described and depicted in **Exhibit "A"** and made a part of this  
document.

Together with all necessary and convenient means of ingress and egress to  
and from said right-of-way or strip or parcel of land, for the purposes of  
constructing, reconstructing, maintaining, operating, repairing, renewing, or

enlarging in any manner the Fiber Optic and Telecommunication facilities, together with any and all of the purposes hereinbefore mentioned.

The term "Fiber Optic and Telecommunication Facilities" shall mean fiber optic cables, coaxial and copper cables, conduits, converters, splice boxes, cabinets, handholes, manholes, vaults, equipment, drains, surface location markers, appurtenances, and related facilities.

This instrument shall bind and inure to the benefit of Grantee, its successors or assigns.

This easement is executed this 3<sup>rd</sup> day of July 2001.

**Grantor(s): Grifcar Partners**  
**A California Limited Partnership**

BY: Longmeadow Development Corporation  
Its: General Partner

JOHN L. GRIFFIN VICE PRESIDENT  
print name: print title:

**CITY OF MILPITAS CERTIFICATE OF ACCEPTANCE**

This is to certify that the interest in real property conveyed by the deed or grant dated 7/3/01 from Grifcar Partners to the City of Milpitas, a governmental agency, is hereby accepted by the undersigned officer or agent on behalf of the City Council of the City of Milpitas pursuant to authority conferred by resolution of the City Council adopted on January 5, 1999, and the Grantee consents to recordation thereof by its duly authorized officer.

CITY OF MILPITAS, A Municipal Corporation

By: David M. McNeely  
David M. McNeely, City Engineer

Dated: 7/19/01

**ALL PURPOSE ACKNOWLEDGMENT**

State of California )  
 ) s.s.  
County of Santa Clara )

On July 3, 2001, before me, Lisa Marie Buck

Notary Public, personally appeared

John L. Griffin

XXX personally known to me;

\_\_\_\_\_ or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Lisa Marie Buck (SEAL)

Signature of Notary Public



**CAPACITY CLAIMED BY SIGNER:**

Though statute does not require the notary to fill in the data below, doing so may prove invaluable to persons relying on the document.

\_\_\_\_ Individual(s)  
\_\_\_\_ Corporate Officer(s) Titles \_\_\_\_\_ and \_\_\_\_\_  
XX Partner(s) \_\_\_\_\_ Limited \_\_\_\_\_ General  
\_\_\_\_ Attorney-in-Fact  
\_\_\_\_ Trustee(s)  
\_\_\_\_ Guardian/Conservator  
\_\_\_\_ Other :  
\_\_\_\_ Grifcar Partners

Signer \_\_\_\_\_ is \_\_\_\_\_ representing: \_\_\_\_\_

**ATTENTION NOTARY:** Although the information requested below is optional, it could prevent fraudulent attachment of this certificate to unauthorized document.

Title or type of document Telecommunications e-ement

Number of pages: \_\_\_\_\_ Date of document: \_\_\_\_\_

Signer(s) other than named above: \_\_\_\_\_

**THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED ABOVE**



91625-13  
August 17, 2000  
THM

**EXHIBIT "A"**

**LEGAL DESCRIPTION FOR**

**A FIBER OPTIC AND TELECOMMUNICATION EASEMENT OVER LANDS OF  
GRIFCAR PARTNERS, A CALIFORNIA LIMITED PARTNERSHIP TO BE CONVEYED  
TO THE CITY OF MILPITAS**

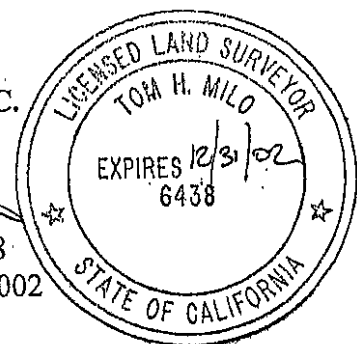
All that certain real property situate in the City of Milpitas, County of Santa Clara, State of California, being an easement for waterline purposes described as follows:

**COMMENCING** at the Northeasterly corner of Parcel 2 of Parcel Map 655-24, Santa Clara County Records, same corner being on the curving right-of-way line of California Circle, being a curve to the left from which the center bears North 65° 49' 03" East as shown on the attached sketch; **THENCE** 18.57 feet along the arc of the easterly curving line of Parcel 2, having a radius of 1035.00 feet and through a central angle of 01° 01' 42" to the **POINT OF BEGINNING** hereof; **THENCE** 7.76 feet continuing along the arc of the curve to the left, having a radius of 1035.00 feet and through a central angle of 00° 25' 47", **THENCE** leaving the aforesaid line and across to Parcels 2 & 4 of said parcel map for the following Three (3) courses: 1) South 79°34'39"West, 201.82 feet; 2) South 2°16'50"East, 130.49 feet; 3) South 87°43'10"West, 184.00 feet to a point on the line common to Parcel 4 of the aforesaid Parcel Map and the Easterly line of the Nimitz freeway (route 880); Thence along the common line between the Nimitz freeway (route 880) and Parcel 4, North 02°16'50"West, 10.00 feet; **THENCE** leaving the aforesaid easterly line of the Nimitz freeway, North 87°43'10" East, 174.00 feet to a point on the line common to Parcels 2 & 4 of the aforesaid Parcel Map; **THENCE** along the westerly line of Parcel 2, North 2°16'50" West, 126.64 feet; **THENCE** across said Parcel 2, North 79°34'39" East, 208.84 feet to the **POINT OF BEGINNING** and containing 4616 square feet of land more or less. Together with a temporary ingress and egress easement 10 feet wide to construct proposed improvements.

Prepared on August 17, 2000  
**MARK THOMAS & CO. INC.**

Tom H. Milo LS 6438  
Expiration Date 12/31/2002

Signed on AUG. 17/2000  
Date





PARCEL 1

$\Delta = 01^{\circ}01'42''$   
 $R = 1035.000'$   
 $L = 18.574'$

CALIFORNIA

POC

N 65°49'03"E (R)

POB

N 64°47'21"E (R)

CIRCLE

S 02°16'50"E 18.18'

EXISTING 36' WIDE P.W.L.E., J.A.E. & P.S.U.E.

S 79°34'39"W 201.68'

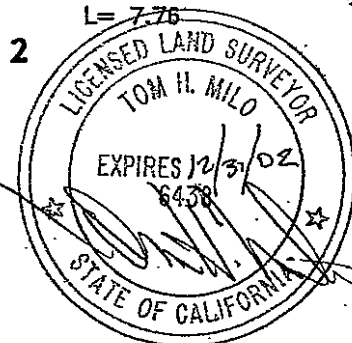
S 79°34'39"W 208.84'

S 79°34'39"W 201.82'

7.50'

$\Delta = 00^{\circ}25'47''$   
 $R = 1035.000'$   
 $L = 7.76'$

PARCEL 2



655-24

PROPOSED FIBER OPTIC AND TELECOMMUNICATION ESM'T  
4,616 SQUARE FEET

PARCEL MAP

PARCEL 3

N 02°16'50"W 126.64'

S 02°16'50"E 130.49'

N 87°43'10"E 174.00'

S 87°43'10"W 184.00'

EXISTING 15' WIDE  
P.S.D.E.

### LEGEND

P.O.C.	POINT OF COMMENCEMENT
P.O.B.	POINT OF BEGINNING
—	PARCEL LINE
- - -	EASEMENT LINE
J.A.E.	JOINT ACCESS EASEMENT
P.S.D.E.	PRIVATE STORM DRAIN EASEMENT
P.S.U.E.	PUBLIC SERVICE UTILITY EASEMENT
P.W.L.E.	PRIVATE WATER LINE EASEMENT

PARCEL 4

EXHIBIT "A"

PLAT TO ACCOMPANY DESCRIPTION  
FIBER OPTIC AND TELECOMMUNICATION EASEMENT OVER LANDS OF  
OF GRIFCAR PARTNERS TO BE CONVEYED TO THE CITY OF MILPITAS  
SANTA CLARA COUNTY



MARK THOMAS & CO. INC.  
CONSULTING CIVIL ENGINEERS AND MUNICIPAL PLANNERS  
50 ARCHER STREET, SAN JOSE, CALIFORNIA 95112

DESIGNED BY THM  
CHKD BY  
DATE 8/17/00  
SCALE 1" = 50'

APPROVED BY  
BY  
RCE NIL

JOB NO.  
91625  
FILE NO.  
SHEET  
1 OF 1

NIMITZ FREEWAY  
1-880

## EXHIBIT D

Mr. Rudy Dantes  
Caltrans Permits Dept---Manager

This memo is to confirm our conversation concerning the future use of fiber optic ducts installed within a water line casing under highway 880 in Milpitas.

In 1998, as McCarthy Blvd was being expanded to the north, the City of Milpitas required that Mr. McCarthy install a new water main under Highway 880 to provide the water service in the new building area. That project installed a 28" casing under the highway with a 14" water carrier pipe. Caltrans Encroachment Permit # 0498-NMC-0388 was issued to grant this project permission to bore and jack under the freeway.

In the cavity area between the 14" water line and the 28" casing, the project also installed four 1.25" dia PVC ducts to be used for future communications needs of the city. At this point it is unclear whether these ducts were added as a change order or if they were considered minor work items in the original project---at any rate, the Caltrans Encroachment Permit for the water line and casing is silent as far as the ducts are concerned.

This memo is to confirm the fact that we have reviewed the situation and it is your belief that the city could now lease any of these idle ducts to a communication company and that the communication company could pull their cable through for their use. Furthermore, you have requested that the following two steps be followed to achieve this activity:

1. The communication company involved should apply to your office in Oakland for their own Encroachment Permit to recognize their involvement with this crossing. A permit application will be processed in the normal fashion.
2. There must be an agreement between the City of Milpitas and the communication company involved and a copy of that agreement must be included in the filing package for the additional encroachment permit.

I believe these are the points we reviewed. If I have omitted anything, please respond. Thank you for your assistance on this topic.

Ken Naylor 408-467-9156